



Discretionary Parole in California, A Report Submitted to the Committee on Revision of the Penal Code

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Board of Parole Hearings

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What is Discretionary Parole?

Discretionary parole is a decision to release a person from incarceration whose sentence has not expired, on condition of sustained lawful behavior that is subject to supervision and monitoring in the community

Why Discretionary Parole?

- Promotes rehabilitation
- Individualized consideration, reduces recidivism
- Reduces inmate population
- Independent board decides release



Expanding Parole Eligibility

Before 2014: Serving Life “with the Possibility of Parole”

Of the 33,676* persons sentenced to “life with the possibility of parole” in prison:

- 6,166 would need to serve an additional 40 years based on their sentence before they would be eligible for a parole hearing
- 1,528 of whom would need to serve an additional 100 to 600 years on their sentence before they would be eligible for a parole hearing
- 265 would need to serve more than 600 additional years on their sentence before they would be eligible for a parole hearing.

* As of October 12, 2020



California's Prison Population

October 2020

About 100,000 total population:

- 60,000 determinately sentenced
 - 14,000 eligible for parole review (paper review process)
 - Persons with long sentences are eligible for a parole hearing after serving 15, 20, or 25 years
- 34,000 sentenced to life with the possibility of parole and who are or will be eligible for a parole hearing
- 5,000 sentenced to life without the possibility of parole
 - 234 juveniles sentenced to life without the possibility of parole and eligible for a parole hearing
- 700 condemned



Parole Hearings

Significant Changes in the Law

- Current unreasonable risk of dangerousness; denial lengths
 - *Lawrence/Shaputis I/Marsy's Law (2008)*
- Youth offender parole hearings; adolescent brain development
 - *Determinately or indeterminately sentenced*, under age 26 at time of controlling offense; eligible after serving 15, 20, or 25 years (2014, 2016, 2018)
 - *Sentenced to life without the possibility of parole* and under age 18 at time of controlling offense; eligible after serving 25 years (2018)
- Elderly Parole; advanced age, long-term confinement
 - *Determinately or indeterminately sentenced*, age 50 and have served 20 years (2020) or age 60 and served 25 years (2014, 2017)

Parole Hearings

Impact of Changes in the Law on Parole Eligibility

	Initial Parole Hearing in 2021 or Prior	Initial Parole Hearing in Next 20 Years (2022-2040)	Initial Parole Hearing in Next 20- 40 Years (2041-2060)	Initial Parole Hearing in 40+ Years (2061+)	Total
If 2013 Law Applied to Today's Population	9,205	12,049	6,256	6,166	33,676
Today's Population with Current Law Applied	14,715	23,808	2,928	13	41,464

- **2013** – only **indeterminately sentenced** persons were eligible for a parole hearing after serving the minimum term imposed by the court
- **2020** – **determinately and indeterminately sentenced** persons are eligible for a parole hearing after serving the minimum term imposed by the court **or** after serving 15, 20, or 25 years if eligible for a youth offender hearing, elderly parole hearing, or a nonviolent offender hearing under Proposition 57, whichever is earliest



Professionalism and Accountability

Training and transparency

Then

- New commissioner training: 1 week
- On-going training: 40 hours/year
- Deputy commissioners - retired annuitants
- Hearing transcripts available to the public for in-person viewing only upon request
- Only credentialed press could observe hearings
- Decisions unstructured and risk assessment tools were not used
- Grants of parole were rare (13 grants in 1999)

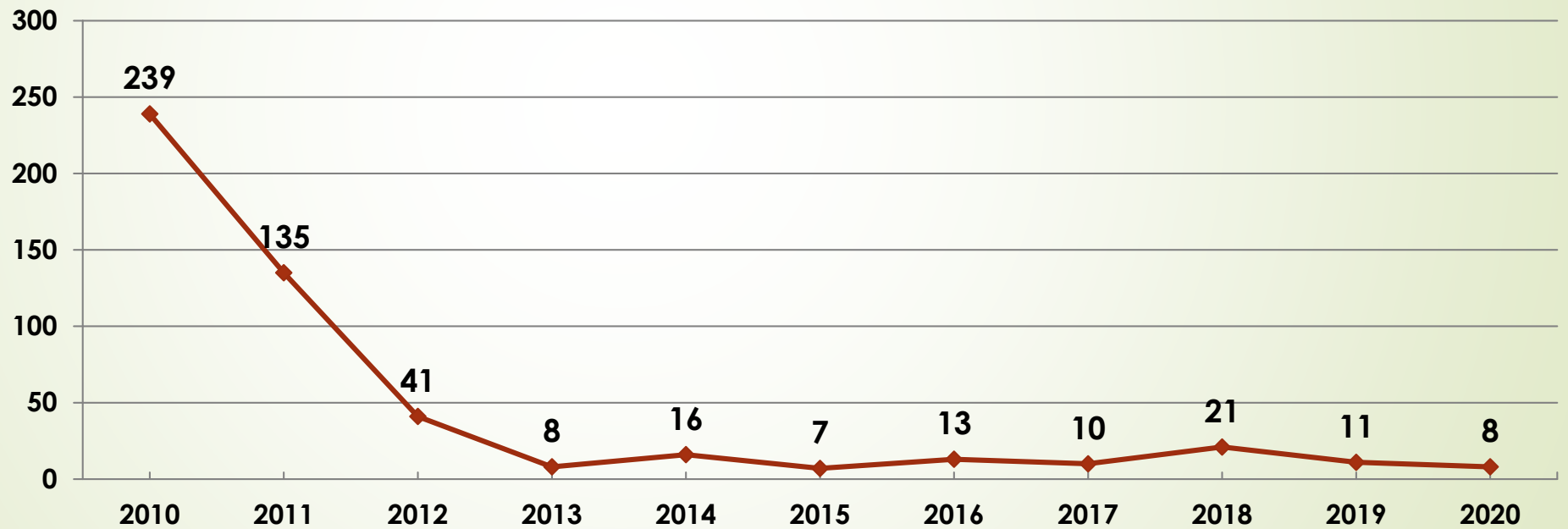
Now

- New Commissioner training: 5 weeks + National Judicial College
- On-going training: 2 weeks/year & monthly
- Deputy commissioners - administrative law judges/attorneys
- Hearing transcripts available electronically upon request via website
- Hearing observation upon request for education and information purposes
- Structured decision-making and risk assessments by forensic psychologists
- In 2020 36% of hearings held resulted in a grant (1,234 grants)

Outcomes

Successful Challenges to Parole Hearing Decisions

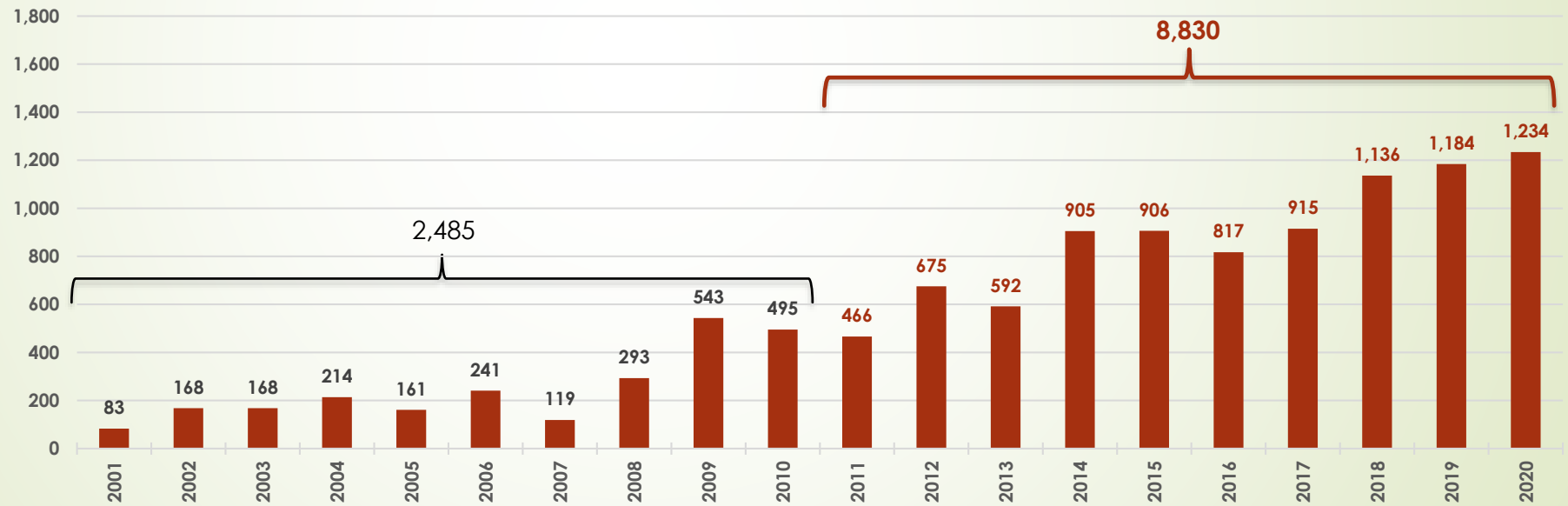
Court-Ordered Hearings 2010-2020



Outcomes

Parole Hearing Grants

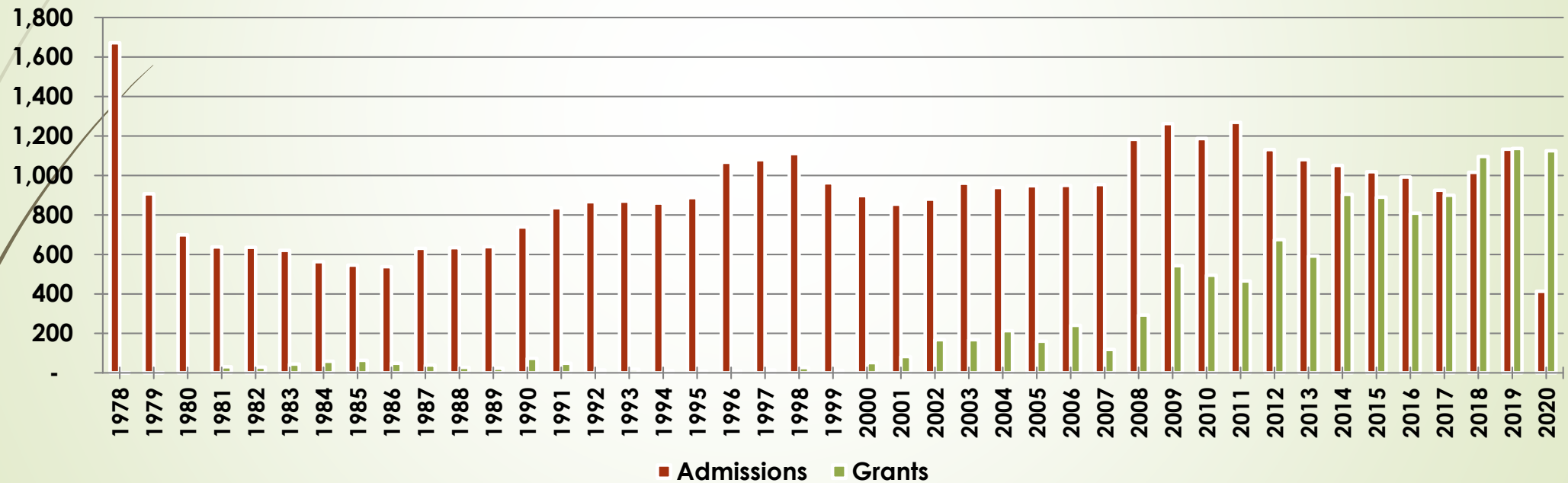
The number of persons granted parole in the past 10 years is more than three times the number granted parole in the preceding 10 years



Outcomes

Annual Number of Admissions v. Grants of Parole

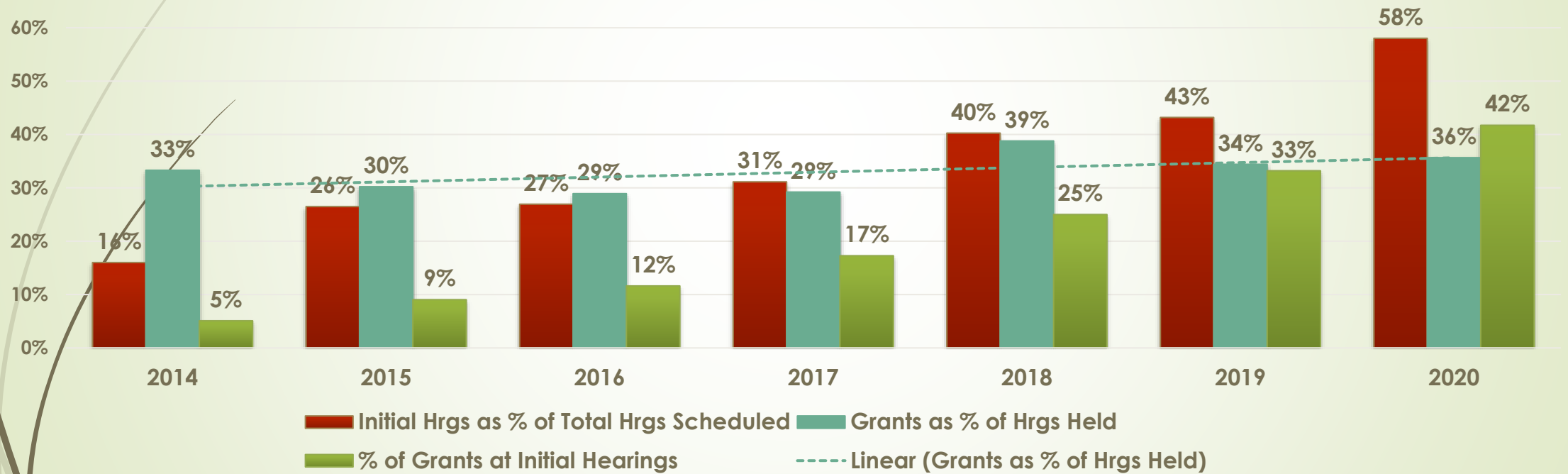
**Persons Sentenced to Life with the Possibility of Parole
Admissions v. Grants of Parole
1991 - 2020**



Outcomes

Trends in Grant Rates and Scheduled Hearings

**Trends in Grant Rates
2014 - 2020**

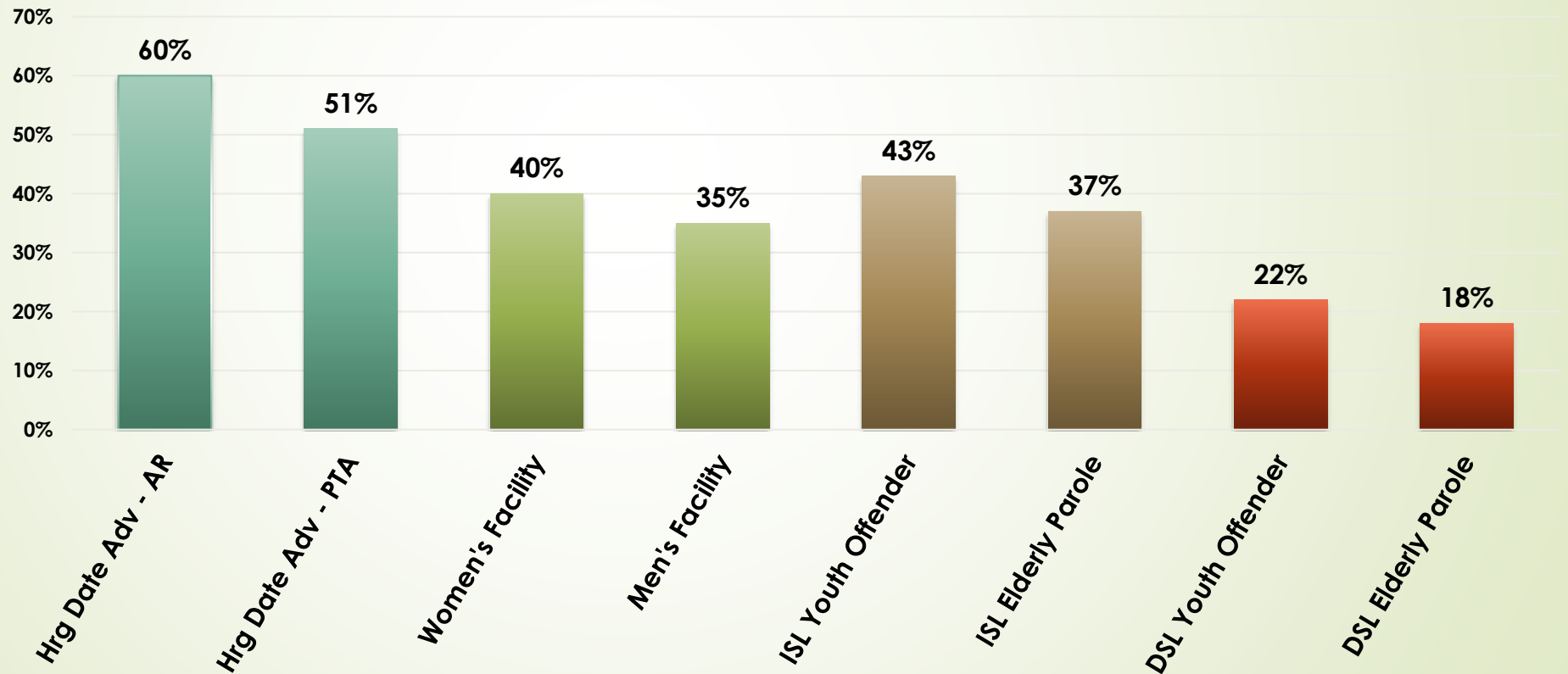


Outcomes

2020 Grant Rates by Hearing Type*

*36% of all hearings held in 2020 resulted in a grant of parole

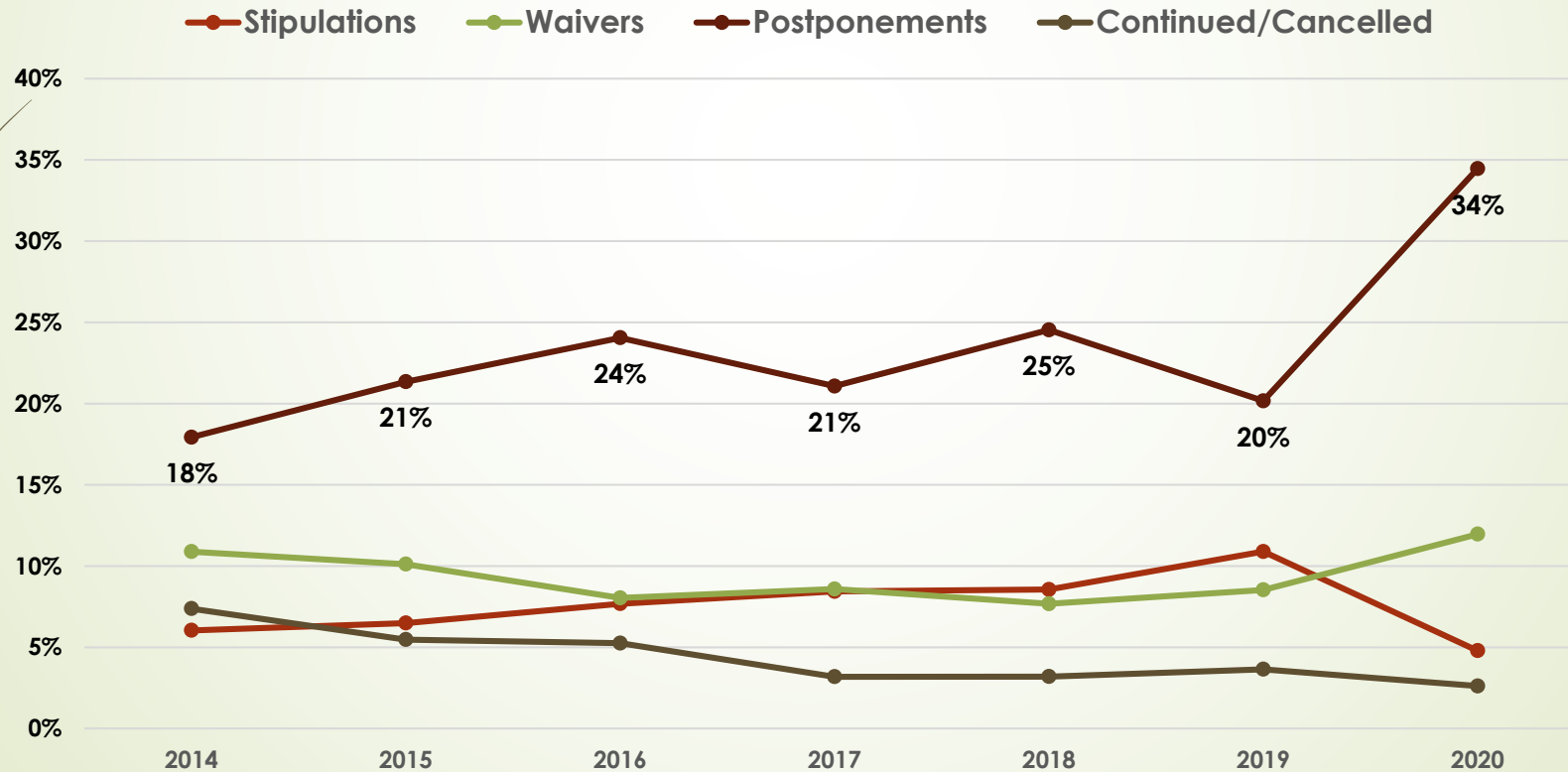
Categorical Grant Rates for Hearings Held in 2020



Outcomes

Rates for stipulations, waivers, postponements, etc.

**Percentage of Scheduled Parole Hearings Resulting in a Stipulation,
Waiver, Postponement, Continuation/Cancellation
2014 - 2020**



Recidivism

Recidivism Rates Persons Released After Grant of Parole Fiscal Year 2011-12 through 2015-16





Recidivism

- Of the 720 indeterminately-sentenced persons released by the Board in fiscal year 2015-16, 23 (3.2%) were convicted of a misdemeanor or felony during a three-year follow-up period, five of whom (0.7%) were convicted of a felony crime against a person.
- Of the 682 indeterminately-sentenced persons released by the Board in fiscal year 2014-15, 16 (2.3%) were convicted of a new misdemeanor or felony during a three-year follow-up period, three of whom (0.4%) were convicted of a felony crime against a person.
- Of the 510 indeterminately-sentenced persons released in fiscal year 2013-14 as a result of a grant of parole by the Board, 16 (3.1%) were convicted of a misdemeanor or felony during a three-year follow-up period, three of whom (0.6%) were convicted of a felony crime against a person
- Of the 478 indeterminately-sentenced persons released in fiscal year 2012-13, 20 (4.2 %) were convicted of a misdemeanor or felony during a three-year follow-up period, two of whom (0.4%) were convicted of a felony crime against a person
- Of the 349 indeterminately-sentenced persons released by the Board in fiscal year 2011-12, 11 (3.2) percent were convicted of a misdemeanor or felony during a three-year follow-up period, one of whom (0.3%) was convicted of a felony crime against a person

Source: CDCR Recidivism Reports



Proposition 57 Nonviolent Parole Review Process,

A Report Submitted to the Committee on Revision of the
Penal Code



Nonviolent Parole Review

Eligibility

Proposition 57, passed by the voters in November 2016:

Any person convicted of a **nonviolent felony offense** shall be eligible for parole consideration after completing the **full term of their “primary offense,”** which is defined as the longest term of imprisonment imposed by the court for any offense, excluding the imposition of an enhancement, consecutive sentence, or alternative sentence

The Department of Corrections and Rehabilitation shall adopt regulations in furtherance of these provisions, and the Secretary of the Department of Corrections and Rehabilitation shall certify that these regulations protect and enhance public safety.

- Cal. Const., art. I, § 32



Nonviolent Parole Review Regulations

15 CCR §§ 2449.1-2449.7, 3490-3491

- ▶ Regulations implementing Proposition 57's parole consideration process went into effect on **July 1, 2017**
- ▶ Under the regulations, a **nonviolent felony offense** is any crime not listed as a "violent felony" under Penal Code section 667.5, subdivision (c)
- ▶ Although most **nonviolent felony offenses** involve criminal conduct in which there is no physical injury, some persons eligible for nonviolent parole review were convicted of an offense involving physical injury or threat of physical injury because the crime is excluded from the definition of a "**violent felony**" under Penal Code section 667.5(c)



History of Nonviolent Parole Review

- The nonviolent parole review process actually began prior to Proposition 57
- The Proposition 57 nonviolent parole review process was patterned after a similar process referred to as the nonviolent, second-striker parole review process, implemented in **January 2015** under a court order by the Three Judge Panel (3JP) in the *Plata/Coleman* class action litigation
- The number of people eligible for parole review has since expanded under Proposition 57 and related litigation



Nonviolent, Second-Striker Parole Review Process Under 3JP

- **Eligibility** - persons sentenced to a second strike for a felony offense that was **not a violent felony under Penal Code section 667.5(c)** were eligible for parole consideration
- **Time Served** - persons were eligible once they served **50 percent of their total term**
- **Exclusions** - **indeterminately-sentenced persons** and people required to **register as a sex offender** were excluded
- **Additional Requirement** - eligible persons had to pass **public safety screening criteria** to be referred to the Board for parole consideration; the public safety screening criteria excluded persons from parole consideration based on negative in-prison behavior, such as two or more serious rules violations within the preceding year or a Security Housing Unit term within the preceding five years



Prop. 57 Process v. 3JP Process

3JP NV Parole Review

- NV conviction doubled as 2nd strike
- Parole review after serving 50% of total term
- PC 290 registrants excluded
- Public safety screens applied
- Indeterminately-sentenced persons excluded

Prop. 57 NV Parole Review

- NV conviction doubled as 2nd strike **or** multiple consecutive sentences for NV offenses **or** NV conviction w/ sentencing enhancement
- Parole review after serving full term of primary offense
- *PC 290 registrants included*
- *Public safety screens prohibited*
- *Indeterminately-sentenced persons included*

Timeline of Nonviolent Parole Review

January 2015
Non-Violent, 2nd
Striker Parole
Review
Implemented

August 2017
Additional Credit
Earning under Prop.
57 Implemented

July 2021
Persons required to
register as a sex
offender eligible for
parole
consideration under
Prop. 57
(*In re Gadlin*)

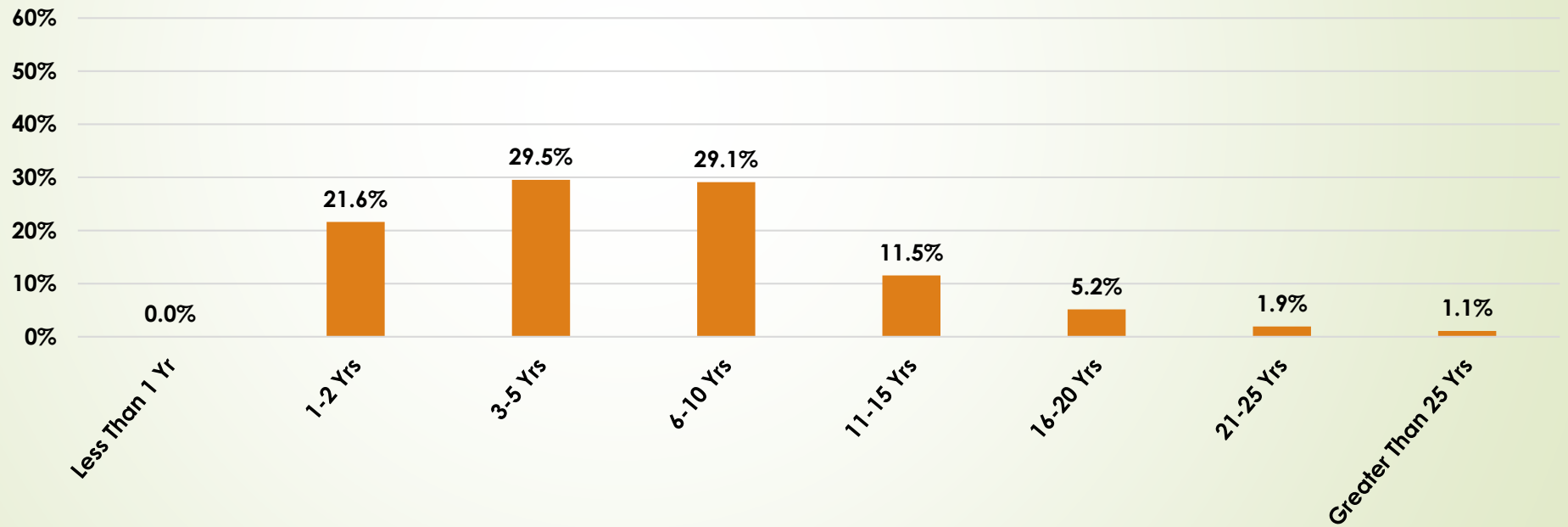
July 2017
-Non-Violent, 2nd
Striker Parole
Review Ended;
-Nonviolent Parole
Review under Prop.
57 Implemented

July 2019
-Public Safety
Screening Criteria
Removed
(*In re McGhee*);
-Indeterminately-
sentenced persons
convicted of
nonviolent offenses
eligible for parole
consideration under
Prop. 57
(*In re Edwards*)

Nonviolent Parole Review Process

Length of Sentence

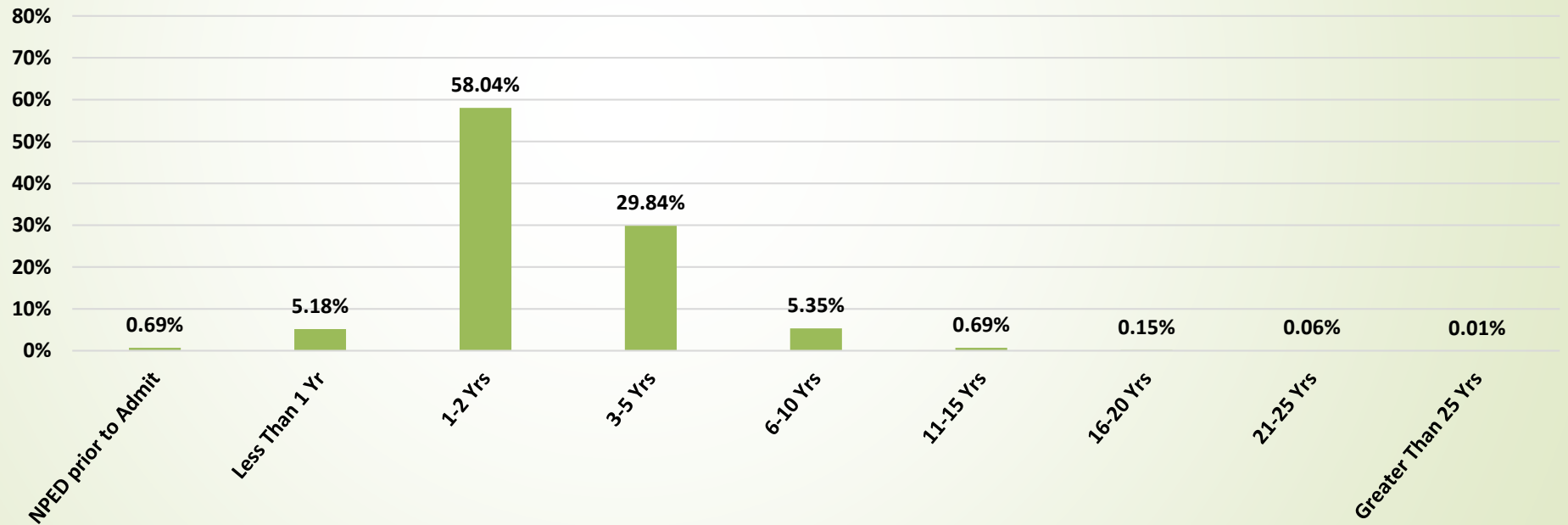
**Determinately-Sentenced Persons Convicted of Nonviolent Offenses Only
Incarcerated Population as of April 30, 2021
by Length of Sentence**



Nonviolent Parole Review Process

Length of time – Admission Date to Parole Eligibility

**Determinately-Sentenced Persons Convicted of Nonviolent Offenses Only
Incarcerated Population as of April 30, 2021
by Length of Time - Admission Date to NPED**





DSL Nonviolent Parole Review Process

Decisions

Who: Deputy commissioners - experienced attorneys & administrative law judges

Varied Experience and Background: private practice (family law, criminal defense, immigration, workers' compensation, taxation), public defender, prosecutor, nonprofit entity, juvenile dependency proceedings, judge or judge pro tem, military, and law enforcement

Training: minimum of eight weeks

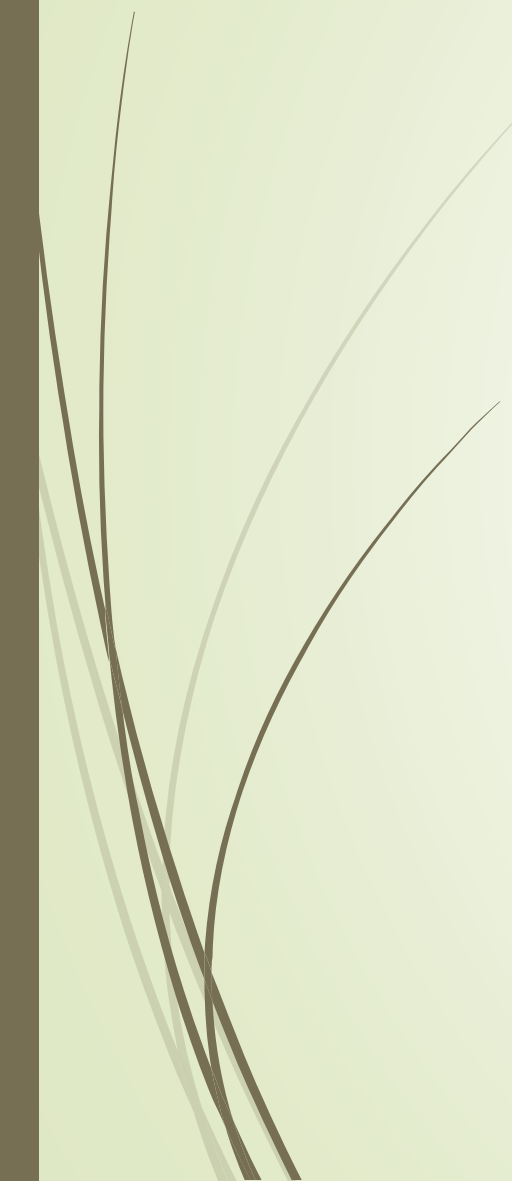
Review: all decisions are monitored and reviewed for the first six to eight months, followed by periodic review thereafter

Other Duties: parole suitability hearings, annual and certification hearings for persons with mental health disorders, parole discharge decisions, administrative reviews, and petitions to advance



DSL Nonviolent Parole Review

Information Reviewed (15 CCR § 2449.4(b))

- Information contained in the incarcerated person's central file, including the California Static Risk Assessment score
 - Criminal history
 - Any return to prison with a new conviction after previously being approved for release under Proposition 57
 - Written statements by the incarcerated person, registered victims, and the prosecuting agency
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DSL Nonviolent Parole Review

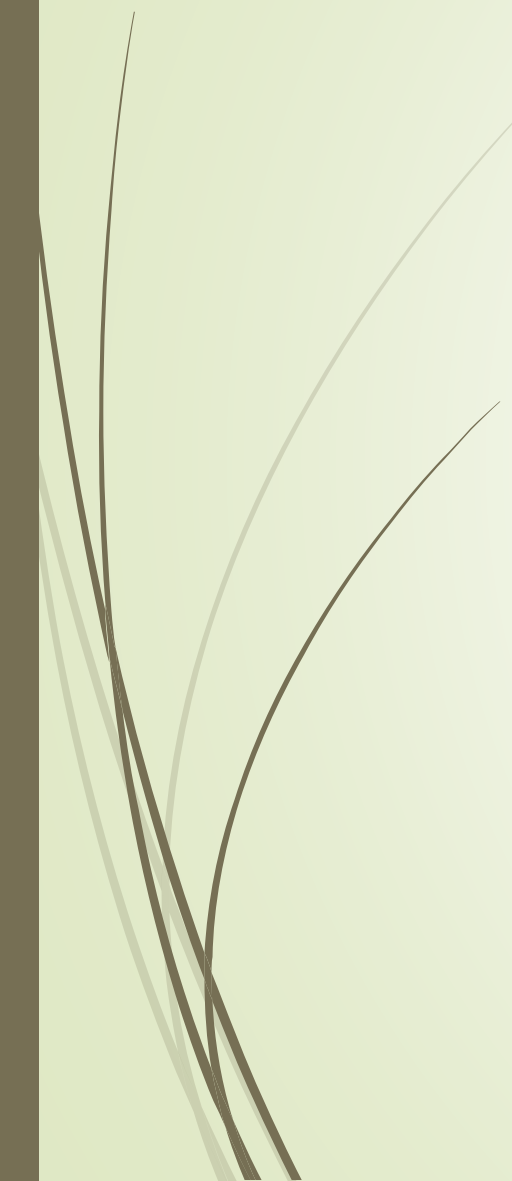
Legal Standard and Factors (15 CCR §§ 2449.4(f), 2449.5(b)-(g))

- **Legal Standard:** current, unreasonable risk of violence or a current unreasonable risk of significant criminal activity
- **Factors Considered:** specific risk factors concerning
 - current conviction(s)
 - prior criminal behavior
 - institutional behavior
 - work history
 - rehabilitative programming



DSL Nonviolent Parole Review

Aggravating v. Mitigating Factors (15 CCR § 2449.5(b)-(g))

- The Board's regulations list specific evidence-based factors that aggravate or mitigate the person's risk
 - Example: crimes in which a person personally used a deadly weapon aggravate the person's risk, whereas crimes that do not involve personal use of a deadly weapon mitigate the person's risk
- 



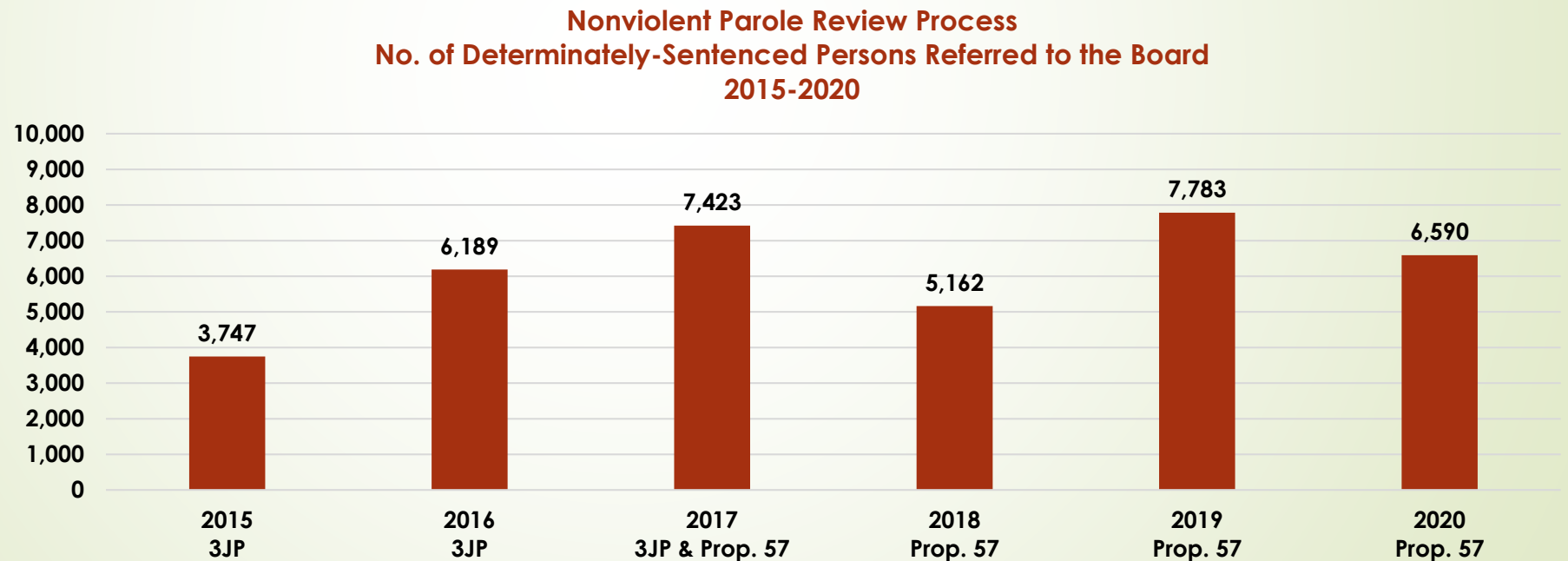
DSL Nonviolent Parole Review

15 CCR §§ 2449.4(d), (f), 2449.5(a)

- Decisions based on the totality of the circumstances
- Persons shall be approved for release if factors aggravating their risk do not exist or if they are outweighed by factors mitigating their risk
- Must also take into account the relevance of the information based on the passage of time, the person's age, and the person's physical and cognitive limitations, if any
- Decisions are rendered in writing and must include a statement of reasons supporting the decision
- Decisions approving a person for release two or more years prior to the end of their term must be reviewed and approved by a supervising deputy commissioner

Number of Persons Referred for Nonviolent Parole Review

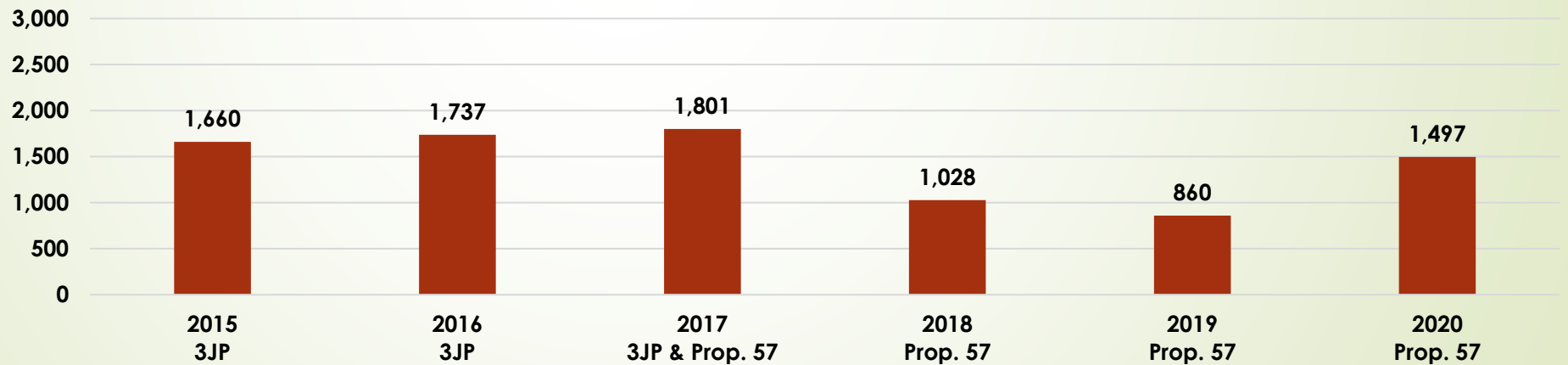
The number of determinately-sentenced persons referred to the Board has varied annually since 2015



Number of Persons Approved for Release

The number of determinately-sentenced persons approved for release has also varied annually from a high of 1,801 in 2017 to a low of 860 in 2019

Nonviolent Parole Review Process
No. of Determinately-Sentenced Persons Approved for Release
2015-2020

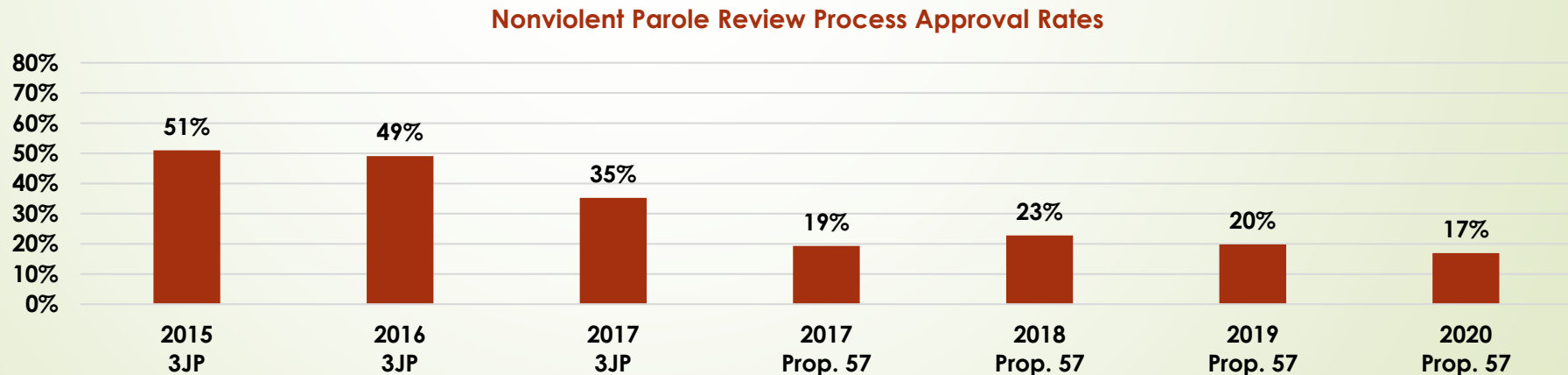


DSL Nonviolent Parole Review

Approval Rates

Highest approval rate: 51% in 2015 for nonviolent, non-sex registrant, second-strikers who had served at least 50 percent of their term with no recent rules violations under the court-ordered process

Lowest approval rate: 17% in 2020 for persons convicted of nonviolent offenses who served the full term for their primary offense regardless of their recent in-prison behavior, and who were not otherwise released “on the natural” with increased credit earning under Proposition 57





Nonviolent Parole Process for Indeterminately-Sentenced Persons

- Majority are nonviolent third strikers
- Eligible once they have served full term of primary offense
 - For persons who received an alternative sentence as a third strike, the aggravated term for the underlying nonviolent offense is used to determine the length of the person's primary offense
- Eligible for parole consideration via CDCR regulations promulgated in December 2018
- Once referred to the Board, receive a full suitability hearing



Nonviolent Parole Process for Indeterminately-Sentenced Persons

Hearing Outcomes

As of September 30, 2021, the Board conducted 1,345 hearings for indeterminately sentenced nonviolent offenders

- 377 grants
- 866 denials
- 102 stipulations to unsuitability

An additional 1,322 hearings were scheduled but were postponed, waived, continued, or cancelled



Questions?